IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 20566 of 2008

Decided on : 08-12-2008

State Bank of India

....Petitioner

VERSUS

Central Information Commissioner and another

....Respondents

CORAM:-HON'BLE MR. JUSTICE HEMANT GUPTA.
HON'BLE MR. JUSTICE NAWAB SINGH.

Present:- Mr. Vikas Chatrath, Advocate
for the petitioner.

HEMANT GUPTA, J

The challenge in the present writ petition is to the order dated 07.10.2008 (annexure P-7) passed by Central Information Commissioner, directing the petitioner to provide the marks obtained by the selected candidate under various heads; the marks obtained by respondent No.2 (hereinafter referred to as the 'applicant') under various heads and the marks secured by the applicant during the last four years, if any, for the performance.

The applicant was considered for promotion as Security Officer from Middle Management Grade Scale-III (for short 'MMGS-III') to Senior Management Grade Scale-IV (for short 'SMGS-IV') in the promotion year 2006-2007. The applicant sought the following

information on 20.06.2007 under the Right to Information Act, 2005 (hereinafter referred to as 'the Act'):-

1. The policy/criteria adopted by the Bank for inclusion in the zone of Selection and promotion of Security Officers from MMGS-III to SMGS-IV for the promotion year 2006-2007.
2. For the sake of transparency, please advise me the score of my last five years performance like the prevailing practice of advising the test performance to general cadre officers.
3. My shortcomings, if any, which had formed the basis of excluding my name from the list of the last year promotions."

The petitioner has been granted information in respect of the policy criteria adopted by the petitioner. However, the following information ordered by the Central Information Commissioner is disputed by the petitioner in the present writ petition.

"1. The marks obtained by the last selected candidate under various heads (without disclosing the name).

2. The marks obtained by the appellant under various heads.

3. If some marks have been prescribed for the performance, the marks secured by the appellant during the last four years against the performance."

Learned counsel for the petitioner has vehemently argued that such information was not sought by the applicant in his application under the Act and that the information sought is exempted from disclosure in terms of Section 8 (1) (e) and (j) of the Act.

Having heard learned counsel for the petitioner, we do not find any merit in the present writ petition. The applicant has sought information for the sake of transparency and the shortcomings of the applicant. Such information is sought in respect of the selection of the applicant for promotion to SMGS-IV. Obviously, the shortcomings can be assessed only in reference to other eligible candidates. The marks obtained by the applicant or other candidates would lead to disclosure of the shortcomings, if any, suffered by the applicant during the process of selection. Thus, the directions given by the Central Information Commissioner to disclose the marks obtained by the applicant and other candidates under the various heads, is the one which has been sought by the applicant by way of his application under the Act.

Before considering the argument raised by the petitioner claiming exemption from disclosure of information, reproduction of the relevant provisions is necessary.

Section 2. Definitions-In this Act, unless the context otherwise requires:-

xxx xxx xxx

(h) "public authority" means any authority or body or institution of self-government established or constituted-

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;

8. Exemption from disclosure of information:

xxxx xxxx xxxx

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

xxx xxx xxx xxx

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Firstly, we will consider the argument of the petitioner in respect of exemption falling within the scope of Section 8 (1)(e) of the Act. The exemption is in respect of information available "to a person in his fiduciary relationship". The question is whether the person mentioned in Clause 'e' is referable to the public authority under Section 2(h) of the Act and what information can be said to be part of fiduciary relationship, not liable to be disclosed. In our opinion, the person in Section 8(1)(e) is not synonymous with public authority which is as defined in Section 2 (h) of the Act. A person as contemplated under Section 8(1)(e) of the Act will be an officer of a public authority who derives some information in the course of his duties for the public authority. It can be a senior functionary of the public authority in whom a junior official confides;

can be an information from third party to an officer of authority and such other information disclosed/acquired by him. It is such information which exempted from disclosure. The person under the General Clauses Act, can include a juristic entity but the person under Section 8(1)(e) is not such juristic entity. If the legislature intend to prohibit disclosure of information available to the public authority, it could have very well used the word 'public authority' in lieu of person. But the use of word 'person' in Clause 'e' connote that the information which has come to the knowledge of a man or woman in confidence alone is sought to be exempted. The other aspect is what information can be said to be available in fiduciary relationship. It is difficult to imagine any information which comes to public authority on account of fiduciary relationship. A juristic entity such as the public authority carries out its affairs in accordance with established procedures. In normal circumstances, all orders, commands, directions, affairs and actions are expected to be written. Similarly, a public authority will act on information received in writing. It is needless to say that the information effecting the sovereignty and integrity of India by the security forces etc. is not part of Clause 'e', as such information is part of Clause 'a' itself. Therefore, it is apparent that the information available to public authority cannot be said to be information available to a person in his fiduciary relationship.

The fiduciary relationship is relationship subsisting between two persons reposing trust and confidence in the other. A fiduciary relationship encompasses the idea of faith and confidence and is generally

established only when the confidence given by one person is actually accepted by the other person. Mere respect for another individual's judgment or general trust in his or her character is ordinarily insufficient for the creation of a fiduciary relationship. Their duties of a fiduciary include loyalty and reasonable care of the assets within custody. All of the fiduciary's actions are performed for the advantage of the beneficiary. The examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que trust,* landlord and tenant etc.

The information sought by the applicant is in respect of selection of process conducted by public authority to fill a public post. The conduct of selection of process and the marks obtained cannot be said to be available to a public authority as in fiduciary relationship exempted from disclosure under Section 8(1)(e) of the Act.

The argument that information claimed is personal information, the disclosure of which has no relationship to any public activity or interest is again mis-conceived. The applicant has sought information in respect of performance of the candidates for the public post. The information sought is not personal information. The medical history of the candidate, the assets owned by the candidate, or such other details which are personal to him can be said to be part of personal information. But the marks obtained by candidates to determine the merit of a candidate for the public post, thus cannot be said to be personal information. The petitioner is bound to maintain the record of the selection process so as to instill confidence of all the candidates.

The marks obtained by each of the candidate cannot be said to be a personal information which would cause any unwarranted invasion of the privacy of the individual. Therefore, we do not find any merit in the said argument.

We do not find that disclosure of such information is exempted from disclosure under Section 8 of the Act.

Consequently, we do not find any merit in the present writ petition . The same is dismissed in limine.

(HEMANT GUPTA)
JUDGE

8th December 2008. **(NAWAB SINGH)**
MONIKA/sanjeev